| **Individual submission to Timetable Panel** **Dispute Reference TTP324 –** **May 2010 Subsidiary Timetable Offer vs.****Schedule 5 Non Compliances in Virgin West Coast Trains Track Access Agreement** **Network Rail Response** |
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**1 DETAILS OF PARTIES**

1.1 The names and addresses of the parties to which this reference is made are as follows:-

(a) {Virgin} West Coast Trains Ltd. whose Registered Office is at ‘The School House’, 50 Brook Green, London W6 7RR ("WCTL") ("the Claimant");

(b) Correspondence Address: Virgin Trains Commercial Department, Room 15, North Wing Offices, Euston Station, London NW1 2HS.

*For Reference Purposes Only*

(c ) Network Rail Infrastructure Ltd, whose registered office is at Kings Place, 90 York Way, London, N1 9AG (“The Respondent”)

 Network Rail correspondence Address: Ian Leigh, Acting CRE (Virgin Trains), Desk 386 11th Floor The Mailbox, 100 Wharfside Street Birmingham, B1 1RT Fax: 0121 345 4004 Mob: [redacted] Email: [redacted]

**2 THE PARTIES’ RIGHT TO BRING THIS REFERENCE**

2.1 WCTL has disputed some aspects of the offer they have received from Network Rail for the May 2010 timetable. This dispute was on the grounds that some timetable slots have not met the Journey Times shown in Schedule 5 of their Track Access Contract (TAC). This dispute has been referred to TTP under Access Condition D3.2.8 and D5.1, shown in Annex A.

**3 CONTENTS OF REFERENCE**

3.1 The Parties have been advised that in view of the reduced timescales involved, and the precise issue being submitted for determination, an individual Reference should be submitted by each Party, with Virgin Trains’ (“The Claimant”) concluding their reference prior to Network Rail (“The Respondent”) in order to give Network Rail the opportunity required to put their case forward, and as such includes:-

(a) The subject matter(s) of the dispute in Section 4;

(b) A detailed summary of those issues in dispute in Section 5;

(c) A listing of those items in dispute prepared by the ‘Claimant’ in Section 6,

(d) Section 7 has not been Used;

(e) The decisions of principle sought from the Panel in respect of legal entitlement and remedies in Section 8;

(f) Annexes and other supporting material.

**4 SUBJECT MATTER OF DISPUTE**

4.1 The key issue at the centre of this WCTL dispute, is that WCTL claim Network Rail is in breach of its Schedule 5 obligations under the TAC, the direct affect of this breach being on the operation of WCTLs’ services as a consequence of those non-compliant services offered by Network Rail as part of its timetable Offer for the Subsidiary Timetable for May 2010.

4.2 Network Rail believes that the rights that WCTL hold in schedule 5 of the TAC in certain circumstances contain errors in that the rights are unable to be delivered with the current Rules of the Plan. In addition the Rules of the Route for the May 2010 timetable, as agreed to by WCTL, contains Network Rail Restrictions of Use that prevent Network Rail from scheduling the journey times in schedule 5 of the TAC. This is as permitted by Paragraph 7.1(c) of schedule 5 of the TAC, shown in Annex B.

**5 SUMMARY OF DISPUTE (BACKGROUND)**

5.1 Network Rail has been in discussion with WCTL for a number of months regarding the Journey Times non compliances and has been working with WCTL to resolve the issues.

5.2 However as WCTL has agreed to the Rules of the Route that have led to a Key Journey Time non compliance, Network Rail believes that the dispute can be resolved by amendment of the Key Journey Time protection. In addition Network Rail believes that there are errors in the drafting of the schedule 5, in that the actual journey times do not agree with the principles as set out in paragraph 4.6 of the section 18 application form for the new TAC, shown in Annex C. This application form was agreed by the parties at the time of submission of the Track Access Contract. As WCTL have not agreed to amend the Key Journey Time protections Network Rail will be progressing a request for a Journey Time Review Notice with ORR, under Paragraphs 7.5 – 7.8 of schedule 5 of the TAC shown in Annex F.

5.3 Network Rail with the agreement of the Train Operators decided to reduce the amount of unplanned delay during times of two track working between Euston and Rugby, between Rutherglen East Junction and Eglinton Street Junction on the approaches to Glasgow Central, between Stafford and Crewe, Dutton and Edge Hill and Balshaw Lane and Preston by actually timing the railway on a two track, slow line, basis for all operators. This decision was in accordance with Decision Criteria (e) maintaining, renewing and carrying out other necessary work on or in relation to the Network and (l) avoiding wherever practicable frequent timetable changes, in particular for railway passenger services. In relation to Decision Criteria (l) there are a number of occasions when it would be possible to time the trains to depart later than currently planned. For example departures from Euston on Sunday mornings and Sunday evenings could be planned to run via Weedon with a 15 minute time saving however on the occasions that the engineering work pattern requires a diversion via Northampton the train would have to depart earlier than advertised so the train maintained its path to destination. For this reason all trains are timed for two track operation and diversion via Northampton so passengers are not left stranded in the evening after missing the last train or facing a long wait for the next train on a Sunday morning. A sample of Rules of the Plan for May 2010 from Watford Junction to Bourne End is shown in Annex D, and the Decision Criteria are shown in Annex E.

**6 EXPLANATION OF EACH ISSUE IN DISPUTE**

6.1 This is a list of the trains that WCTL supplied as in dispute in their offer response document of 29th January 2010 with Network Rail’s comments:

| **WEEKDAY SERVICES (SX)** | **Schedule 5** | **May 2010 Offer** | **Network Rail Comments** |
| --- | --- | --- | --- |
| 1F22 17:07 London Euston to Liverpool Lime Street | 132 | 134 | Bid as 132 but ½ minute too close to 1S87 at Stafford. Not possible to reduce has 2.5 minutes pathing to follow 1S87 16:57 from Euston which calls at Tamworth and Lichfield |
| 1F23 17:33 London Euston to Liverpool Lime Street | 137 | 139 | Bid as 137 Not possible to reduce has extended dwell at Stafford to allow 1H72 17:40 from Euston to pass and platforming issues at Liverpool Lime Street |
| 1F24 18:07 London Euston to Liverpool Lime Street | 132 | 134 | Bid as 132 Not possible to reduce has 2 minutes pathing to follow 1S94 17:57 from Euston which calls at Tamworth and Lichfield. |
| 1F25 18:33 London Euston to Liverpool Lime Street | 139 | 140 | Bid as 139 Not possible to reduce has extended dwell at Stafford to allow 1H73 18:40 from Euston to pass |
| 1F28 21:07 London Euston to Liverpool Lime Street | 140 | 144 | Bid as 140 Has pathing time to follow 6C64 from Crewe to Weaver Jn and then runs slow line Ditton to Edge Hill for Rules of the Route |
| 1P09 21:10 London Euston to Preston | 150 | 151 | Bid as 150 runs slow line from Balshaw Lane to Preston as a restriction of use |
| 1S36 06:17 Birmingham New Street to Edinburgh | 242 | 243 | Bid as 242 Network Rail train planning are considering options to depart at 06:20 |
| 1S39 07:19 Birmingham New Street to Glasgow Central | 236 | 237 | Bid as 236 Network Rail train planning are considering options to depart at 07:20 |
| 1P99 21:20 Birmingham New Street to Preston | 95 | 102 | Bid as 95 pathed to follow 1G42 19:43 Euston which is extended to Wolverhampton in this hour |
| 1A74 20:48 Liverpool Lime Street to London Euston | 179 | 187 | Bid as 182 pathed to follow services displaced off the slow lines caused by slow line restrictions of use |
| 1M61 17:40 Glasgow Central to Birmingham NS | 248 | 250 | Bid as 245 timed to follow LM trains from Wolverhampton to Birmingham New Street |
| 1M87 20:10 Glasgow Central to Crewe | 195 | 197 | Bid as 196 follows an LM train into Crewe |
| 1R07 05:30 Preston to London Euston | 145 | 147 | Bid as 145 runs slow line from Preston to Balshaw as a result of a restriction of use |
| 1R09 06:27 Wolverhampton to London Euston | 84 Bham | 86 | Bid as 83 but follows 1W84 07:13 Northampton to Euston from Ledburn Junction |
| 1R15 06:35 Manchester Piccadilly to London Euston | 130 | 131 | Bid as 130 follows 1W90 07:38 Northampton to Euston from Ledburn Junction |
| 1R20 04:28 Glasgow Central to London Euston | 276 | 277 | Bid as 276 can be retimed to depart at 04:29 by reducing the engineering allowance |

| **SATURDAY SERVICES (SO)** | **Schedule 5** | **May 2010 Offer** | **Network Rail Comments** |
| --- | --- | --- | --- |
| 1G42 19:43 London Euston to Wolverhampton | 85 Bham | 88 | Bid 84 Restrictions of use Euston – Hanslope Junction |
| 1G44 20:24 London Euston to Wolverhampton | 123 | 132 | Bid 117 Restrictions of use Euston – Hanslope Junction then follows 2Y63 20:56 Northampton to Birmingham New Street from Rugby |
| 1G44 20:24 London Euston to Wolverhampton | 96 Bham | 101 | Bid 93 Restrictions of use Euston – Hanslope Junction then follows 2Y63 20:56 Northampton to Birmingham New Street from Rugby |
| 1H74 19:40 London Euston to Manchester Piccadilly | 128 | 133 | Bid 128 Restrictions of use Euston - Hanslope Junction |
| 1H76 21:00 London Euston to Manchester Piccadilly | 149 | 155 | Bid 147 Restrictions of use Euston - Hanslope Junction |
| 1F30 16:33 London Euston to Liverpool Lime Street | 136 | 140 | Bid 136 Platforming issues at Liverpool Lime Street with 18:48 to London |
| 1F25 18:33 London Euston to Liverpool Lime Street | 136 | 137 | Bid 136 Platforming issues at Liverpool Lime Street with 20:48 to London |
| 1F27 20:12 London Euston to Liverpool Lime Street | 151 | 159 | Bid 149 Restrictions of use Euston – Hanslope Junction |
| 1P07 20:30 London Euston to Preston | 169 | 172 | Bid 169 Restrictions of use Euston - Hanslope Junction |
| 1S44 08:20 Birmingham New Street to Edinburgh | 241 | 242 | Bid 241 Contractual error should be the same as weekdays  |
| 1S51 10:20 Birmingham New Street to Edinburgh | 241 | 242 | Bid 241 Contractual error should be the same as weekdays |
| 1S80 16:20 Birmingham New Street to Edinburgh | 241 | 244 | Bid 241 Contractual error should be the same as weekdays |
| 1A65 18:35 Manchester Piccadilly to London Euston | 139 | 143 | Bid 139 Restrictions of use Hanslope Junction – Euston |
| 1A67 18:55 Manchester Piccadilly to London Euston | 127 | 143 | Bid 141 Restrictions of use Hanslope Junction – Euston |
| 1A68 19:35 Manchester Piccadilly to London Euston | 142 | 143 | Bid 142 Restrictions of use Hanslope Junction – Euston |
| 1A66 18:48 Liverpool Lime Street to London Euston | 141 | 147 | Bid 141 Restrictions of use Hanslope Junction – Euston |
| 1A69 19:48 Liverpool Lime Street to London Euston | 141 | 146 | Bid 141 Restrictions of use Hanslope Junction – Euston |
| 1M18 17:40 Glasgow Central to London Euston | 296 | 300 | Bid 296 Restrictions of use Hanslope Junction – Euston |
| 1M18 17:40 Glasgow Central to London Euston | 154 Preston | 156 | Bid 152 Restrictions of use Hanslope Junction – Euston |
| 1M19 18:40 Glasgow Central to Birmingham New Street  | 240 | 246 | Bid 240 Follows LM train from Wolverhampton |
| 1M62 18:52 Edinburgh to Birmingham New Street | 245 | 246 | Bid 241 Restriction of use Crewe - Stafford |

| **SUNDAY SERVICES (SUN)** | **Schedule 5** | **May 2010 Offer** | **Network Rail Comments** |
| --- | --- | --- | --- |
| 1A05 08:38 Liverpool Lime Street to London Euston | 163 | 178 | Bid 162 Restrictions of use Rugby – Euston |
| 1A09 09:38 Liverpool Lime Street to London Euston | 163 | 176 | Bid 163 Restrictions of use Rugby – Euston |
| 1A30 12:48 Liverpool Lime Street to London Euston | 133 | 134 | Bid 132 Arrives in Euston at 15:00 in 132 minutes |
| 1A79 18:55 Manchester Piccadilly to London Euston | 134 | 136 | Bid 134 Restrictions of use Rugby - Euston |
| 1A82 19:36 Manchester Piccadilly to London Euston | 139 | 145 | Bid 139 Restrictions of use Rugby - Euston |
| 1A84 19:48 Liverpool Lime Street to London Euston | 153 | 158 | Bid 154 Restrictions of use Rugby - Euston |
| 1A87 20:48 Liverpool Lime Street to London Euston | 179 | 187 | Bid to call at Rugby so outside journey time protection |
| 1A88 20:55 Manchester Piccadilly to London Euston | 172 | 175 | Bid 159 Restrictions of use Rugby - Euston |
| 1B01 08:05 Wolverhampton to London Euston | 132 | 141 | Bid 130 Restrictions of use Rugby - Euston |
| 1B01 08:05 Wolverhampton to London Euston | 107 Bham | 116 | Bid 105 Restrictions of use Rugby - Euston |
| 1B04 09:05 Wolverhampton to London Euston | 132 | 145 | Bid 130 Restrictions of use Rugby - Euston |
| 1B04 09:05 Wolverhampton to London Euston | 107 | 120 | Bid 105 Restrictions of use Rugby - Euston |
| 1B08 10:05 Wolverhampton to London Euston | 132 | 140 | Bid 131 Restrictions of use Rugby - Euston |
| 1B08 10:05 Wolverhampton to London Euston | 107 Bham | 115 | Bid 106 Restrictions of use Rugby - Euston |
| 1B81 19:45 Wolverhampton to London Euston | 113 | 127 | Bid 110 Restrictions of use Rugby - Euston |
| 1B81 19:45 Wolverhampton to London Euston | 86 Bham | 102 | Bid 85 Restrictions of use Rugby - Euston |
| 1B83 20:30 Birmingham New Street to London Euston | 107 | 112 | Bid 107 Restrictions of use Rugby - Euston |
| 1B86 21:07 Wolverhampton to London Euston | 132 | 139 | Bid 127 Restrictions of use Rugby - Euston |
| 1B86 21:07 Wolverhampton to London Euston | 107 Bham | 116 | Bid 104 Restrictions of use Rugby - Euston |
| 1B89 22:05 Wolverhampton to London Euston | 132 | 148 | Bid 129 Restrictions of use Rugby - Euston |
| 1B89 22:05 Wolverhampton to London Euston | 107 Bham | 123 | Bid 104 Restrictions of use Rugby - Euston |
| 1B90 22:37 Wolverhampton to London Euston | 122 Bham | 124 | Bid 120 Restrictions of use Rugby - Euston |
| 1M07 10:32 Glasgow Central to London Euston | 278 | 280 | Bid 278 Restrictions of use Eglinton Street – Rutherglen East |
| 1M12 11:32 Glasgow Central to London Euston | 278 | 279 | Bid 277 Restrictions of use Eglinton Street – Rutherglen East |
| 1M17 16:38 Glasgow Central to London Euston | 278 | 280 | Bid 277 Restrictions of use Eglinton Street – Rutherglen East |
| 1M18 17:36 Glasgow Central to London Euston | 309 | 314 | Bid 307 Restrictions of use Eglinton Street – Rutherglen East and Rugby to Euston |
| 1M55 11:52 Glasgow Central to Birmingham New Street | 232 | 238 | Bid 230 Restrictions of use Eglinton Street – Rutherglen East |
| 1M57 13:55 Glasgow Central to Birmingham New Street | 232 | 235 | Bid 230 Restrictions of use Eglinton Street – Rutherglen East |
| 1M59 15:54 Glasgow Central to Birmingham New Street | 232 | 236 | Bid 230 Restrictions of use Eglinton Street – Rutherglen East |
| 1M92 20:05 Glasgow Central to Crewe | 193 | 195 | Bid 190 Restrictions of use Eglinton Street – Rutherglen East |
| 1C53 10:21 Crewe to Lancaster | 59 | 61 | Bid 59 has two minutes pathing approaching Euxton jn to allow 2J48 10:20 Blackpool North to Manchester Victoria crossing from the Up Slow at 10/57 |
| 1D91 17:05 London Euston to Holyhead  | 227 | 231 | Bid 227 without the Flint call. Now calls at Flint and so outside journey time protection |
| 1F10 08:15 London Euston to Liverpool Lime Street | 164 | 171 | Bid 163 Restriction of use Euston - Rugby |
| 1F11 09:15 London Euston to Liverpool Lime Street | 164 | 172 | Bid 160 Restriction of use Euston - Rugby |
| 1F12 10:15 London Euston to Liverpool Lime Street | 164 | 173 | Bid 156 Restriction of use Euston - Rugby |
| 1F14 12:02 London Euston to Liverpool Lime Street | 138 | 139 | Bid for 138 Retimed to arrive at 14:20 in 138 minutes |
| 1F17 15:02 London Euston to Liverpool Lime Street | 134 | 138 | Bid 134 Retimed to arrive at 17:18 in 134 minutes |
| 1F18 16:02 London Euston to Liverpool Lime Street | 134 | 135 | Bid 134 Pathed Crewe to Liverpool to follow 1F51 16:35 Birmingham New Street to Liverpool Lime |
| 1F20 18:02 London Euston to Liverpool Lime Street | 134 | 135 | Bid 134 Pathed Crewe to Liverpool to follow 1F51 16:35 Birmingham New Street to Liverpool Lime |
| 1F22 20:02 London Euston to Liverpool Lime Street | 138 | 139 | Bid 138 Restriction of use Euston - Rugby |
| 1F24 21:21 London Euston to Liverpool Lime Street | 169 | 185 | Bid 168 Restriction of use Euston - Rugby |
| 1G02 08:50 London Euston to Wolverhampton | 130 | 141 | Bid 129 Restriction of use Euston to Rugby |
| 1G02 08:50 London Euston to Wolverhampton | 105 Bham | 117 | Bid 105 Restriction of use Euston to Rugby |
| 1G04 09:50 London Euston to Wolverhampton | 130 | 141 | Bid 129 Restriction of use Euston to Rugby |
| 1G04 09:50 London Euston to Wolverhampton | 105 Bham | 117 | Bid 105 Restriction of use Euston to Rugby |
| 1G06 10:50 London Euston to Wolverhampton | 130 | 141 | Bid 129 Restriction of use Euston to Rugby |
| 1G06 10:50 London Euston to Wolverhampton | 105 Bham | 117 | Bid 105 Restriction of use Euston to Rugby |
| 1G46 17:58 London Euston to Wolverhampton | 113 | 118 | Bid 108 Has an extended dwell at Birmingham new street to follow XC and LM |
| 1G52 18:58 London Euston to Wolverhampton | 112 | 120 | Bid 109 Has an extended dwell at Birmingham new street to follow XC and LM |
| 1G62 20:38 London Euston to Wolverhampton | 113 | 118 | Bid 110 Restriction of use Euston to Rugby |
| 1G62 20:38 London Euston to Wolverhampton | 87 Bham | 91 | Bid 86 Restriction of use Euston to Rugby |
| 1G66 21:55 London Euston to Wolverhampton | 130 | 150 | Bid 126 Restriction of use Euston to Rugby |
| 1G66 21:55 London Euston to Wolverhampton | 105 Bham | 129 | Bid 105 Restriction of use Euston to Rugby |
| 1G68 22:25 London Euston to Wolverhampton | 105 Bham | 118 | Bid 104 contractual error as the overall time is 167. Restriction of use Euston to Rugby |
| 1G70 23:25 London Euston to Wolverhampton | 105 Bham | 117 | Bid 104 contractual error as the overall time is 167. Restriction of use Euston to Rugby |
| 1H35 21:24 London Euston to Manchester Piccadilly | 157 | 166 | Bid 144 Restriction of use Euston to Rugby |
| 1H75 20:35 London Euston to Manchester Piccadilly | 139 | 142 | Bid 138 Restriction of use Euston to Rugby |
| 1H77 21:50 London Euston to Manchester Piccadilly | 167 | 180 | Bid 167 Restriction of use Euston to Rugby |
| 1S37 08:45 London Euston to Glasgow Central | 308 | 314 | Bid 308 Restriction of use Euston to Rugby and Rutherglen East to Eglinton Street |
| 1S37 08:45 London Euston to Glasgow Central | 138 Preston | 173 | Bid 167 error in the contract as trains with this stopping pattern are only allowed 2 minutes longer to Preston than the pattern with 3 less stops Restriction of use Euston to Rugby |
| 1S40 09:45 London Euston to Glasgow Central | 308 | 317 | Bid 308 Restriction of use Euston to Rugby and Rutherglen East to Eglinton Street |
| 1S40 09:45 London Euston to Glasgow Central | 138 Preston | 174 | Bid 167 error in the contract as trains with this stopping pattern are only allowed 2 minutes longer to Preston than the pattern with 3 less stops Restriction of use Euston to Rugby |
| 1S45 10:45 London Euston to Glasgow Central | 308 | 316 | Bid 306 Restriction of use Euston to Rugby and Rutherglen East to Eglinton Street |
| 1S45 10:45 London Euston to Glasgow Central | 138 Preston | 175 | Bid 165 error in the contract as trains with this stopping pattern are only allowed 2 minutes longer to Preston than the pattern with 3 less stops Restriction of use Euston to Rugby |
| 1S69 13:25 London Euston to Glasgow Central | 276 | 277 | Bid 273 Restriction of use Rutherglen East to Ellington Street |
| 1S78 15:25 London Euston to Glasgow Central | 276 | 277 | Bid 273 Restriction of use Rutherglen East to Ellington Street |
| 1S80 16:20 Birmingham New Street to Edinburgh | 241 | 244 | Bid 241 Train planning are working on retiming this train |
| 1B04 09:05 Wolverhampton to London Euston | 132 | 145 | Restrictions of use Rugby - Euston |
| 1B04 09:05 Wolverhampton to London Euston | 107 | 120 | Restrictions of use Rugby - Euston |
| 1M17 16:38 Glasgow Central to London Euston | 278 | 280 | Restrictions of use Eglinton Street – Rutherglen East |
| 1F10 08:15 London Euston to Liverpool Lime Street | 164 | 171 | Restrictions of use Euston - Rugby |
| 1F24 21:21 London Euston to Liverpool Lime Street | 169 | 185 | Restrictions of use Euston - Rugby |
| 1G06 10:50 London Euston to Wolverhampton | 130 | 141 | Restrictions of use Euston to Rugby |
| 1G06 10:50 London Euston to Wolverhampton | 105 Bham | 117 | Restrictions of use Euston to Rugby |
| 1H01 08:20 London Euston to Manchester Piccadilly | 157 | 167 | Restrictions of use Euston to Rugby |
| 1H03 09:20 London Euston to Manchester Piccadilly | 157 | 167 | Restrictions of use Euston to Rugby |
| 1H05 10:20 London Euston to Manchester Piccadilly | 157 | 167 | Restrictions of use Euston to Rugby |
| 1A03 08:20 Manchester Piccadilly to London Euston | 153 | 157 | Restrictions of use Rugby to Euston |
| 1A07 09:20 Manchester Piccadilly to London Euston | 153 | 165 | Restrictions of use Rugby to Euston |
| 1A12 10:35 Manchester Piccadilly to London Euston | 141 | 142 | Restrictions of use Rugby to Euston |

**7. OTHER SPECIFIC ISSUE(S) HIGHLIGHTED BY NETWORK RAIL**

Network Rail has reviewed the TAC and the extent of the flexibility contained. At the time of agreeing to the new TAC in December 2008, Network Rail believed that there was sufficient flex to deliver all the operators rights on the West Coast Main Line. Network Rail is now of the view that the Schedule 5 of the WCTL TAC is a significant constraint which may be in breach of the Access and Management Regulations 2005.

**8 DECISION SOUGHT FROM THE PANEL**

8.1 The Panel is asked to determine that:

**(a) Network Rail has provided paths during the times of agreed restriction of use (in the Rules of the Route) in accordance with the decision criteria (e) and (l).**

**(b) That Network Rail is correct to approach the ORR for a Journey Time Review Notice to amend the relevant journey times in the contract.**

8.2 List any specific remedies.

 **a) None**

**.**

8.3 The Panel is asked to decide the following other issue –.

 **None**

**9 SIGNATURES**

For and on behalf of West Coast Trains Ltd.

Signed

Print name: Robert Hodgkinson

Position:

Date:

**10. ANNEXES**

***Annex “A” Access Condition D3.2.8 and D5.1***

***Annex “B” Paragraph 7.1 of Schedule 5 of the Track Access Contract***

***Annex “C” Section 4.6 from the section 18 application form for the new TAC***

***Annex “D” : Rules of the Route Section 4 between Watford Junction and Bourne End***

***Annex “E” The Decision Criteria Access Condition D6***

***Annex “F” Paragraphs 7.5 -7.8 of Schedule 5 of the Track Access Contract***

 **ANNEX “A”**

3.2.8 *Acceptance of the First Working Timetable*

A Bidder shall, in respect of

(a) the Working Timetable notified in accordance with Condition D3.2.7(a); or

(b) the Train Slots notified in accordance with Condition D3.2.7(b) and any other Train Slots which the Bidder believes should have been notified in accordance with Condition D3.2.7,

within 10 Working Days of receipt of the notification advise Network Rail of any Train Slots which it disputes and will be the subject of a reference to the relevant ADRR Panel. Network Rail’s decisions in respect of those Train Slots not so advised by the Bidder shall be deemed to have been accepted by the Bidder and may not be the subject of a reference to the relevant ADRR Panel or the Office of Rail Regulation pursuant to Condition D5.

**5.1 Right of appeal to relevant ADRR Panel**

5.1.1 Grounds for making an appeal

Without prejudice to Conditions D4.6.2, D4.7.1 and D4.8.6, if any Bidder is dissatisfied with any decision of Network Rail made under this Part D, including:

(a) the application by Network Rail of the Decision Criteria;

(b) the acceptance or rejection by Network Rail of any Bid;

(c) the exercise by Network Rail of a Flexing Right; and

(d) any decision of Network Rail which may be referred to the relevant ADRR Panel under Condition D2.1.7, D2.1.11, D2.2.4 or D2.2.7,

it may refer the matter to the relevant ADRR Panel for determination.

5.1.2 Timescales for making an appeal to the relevant ADRR Panel

(a) A reference to the relevant ADRR Panel under Condition D5.1.1 shall, save as shown in paragraph (b) or (c) below, be made within five Working Days of receipt of the relevant decision from Network Rail. If Christmas Day occurs within such period of five Working Days then the period shall be lengthened to 10 Working Days.

(b) A reference to the relevant ADRR Panel in respect of a decision by Network Rail regarding Train Slots notified to Bidders in accordance with Condition D2A.3 or Condition D3.2.7 shall be made within 10 Working Days of receipt of the relevant decision.

(c) A reference to the relevant ADRR Panel pursuant to Condition D2.2.4 shall be made within 30 days of receipt of the notification referred to in Condition D2.2.3.

**ANNEX “B”**

7.1 In relation to the Applicable Rules of the Route and the Applicable Rules of the Plan:

(a) Network Rail shall not propose or agree to any amendments to the Applicable Rules of the Route or the Applicable Rules of the Plan which would prevent it from Scheduling a Journey Time in the Weekday, Saturday and Sunday Working Timetables:

(i) which is equal to or less than the Fastest Key Journey Time specified for at least one Passenger Train Slot for each of the Key Journeys specified in Table 6.2 in respect of each Weekday; and

(ii) which is equal to or less than the relevant Maximum Key Journey Time specified for every Passenger Train Slot consistent with each Key Journey of the type specified in Table 6.3;

(b) paragraph 7.1(a) shall not apply in relation to any such amendment which is proposed by the Train Operator or effected pursuant to the order of an appeal body under Part D of the Network Code or any other competent tribunal; and

(c) Network Rail shall not be in breach of paragraph 7.1(a) to the extent that the failure to Schedule any Journey Time in accordance with paragraph 7.1(a)(i) or (ii) is the result of any Network Rail Restriction of Use, Competent Authority Restriction of Use or Operator Restriction of Use (as these terms are defined in or for the purposes of Part 3 of Schedule 4).

**Annex “C”**

| **4.6 Journey time protection** Please describe the extent to which the proposed contract affords journey time protection to any services (by establishing maximum journey times, fastest key journey times or maximum key journey times), and explain the justification for the form and extent of protection sought by reference to ORR’s criteria  |
| --- |
| The WCML is one the country’s key rail routes and has been the subject of a multi-billion pound upgrade using public money to deliver reduced journey times, more trains and greater reliability for the travelling public. The parties recognise that to deliver value for money to the taxpayer and for passengers to enjoy the full benefits of the upgrade, it is essential that the route performs – and continues to perform – as agreed with the DfT. In addition, the parties recognise that all the Train Operator’s services are commercially important and represent very significant investment and franchise value so, in line with the ORR’s guidance, most services have key journey time protection.Given the complexity of the journey time protection applied, we have provided separate tables for weekdays, Saturdays and Sundays. In the case of London to Birmingham / Wolverhampton and London to Preston / Glasgow / Edinburgh services, there are journey times within journey times. In other words, as well as the journey time for the entire journey, the parties have also agreed a separate journey time for the part of the journey from London to Birmingham / Preston, respectively. The two reasons for this are because the first part of the journey is: (i) commercially more important, and (ii) measured by the SLC between the Train Operator and the DfT. The parties therefore see that clearly setting out the journey time commitments to these sections makes clear the obligations Network Rail has to deliver in terms of maintaining the infrastructure. Splitting the journey times in this way also demonstrates that the journey times are within the SLC values and shows that the Train Operator, with Network Rail’s help, is meeting its obligations to the DfT.Maximum key journey times will apply every day of the week (weekdays and weekends); fastest key journey times will apply on weekdays only.**Weekdays:** The key business trains have limited flex. If the train has no pathing time, one minute’s flex is applied. If the train does have pathing time, then no flex is included in the journey time and the timetabled journey time applies. The key business trains are Up trains with a 1Rxx headcode and the Down evening peak trains departing London from 15:20 until 18:30. For trains departing after the morning peak but before the evening peak, standard levels of flex apply as shown below:* London to Birmingham – 1 minute
* Birmingham to Wolverhampton – 2 minutes
* London to Chester – 2 minutes
* Chester to Holyhead – 2 minutes
* London to Manchester – 2 minutes
* London to Liverpool – 2 minutes
* London to Preston – 2 minutes
* Preston to Glasgow – 3 minutes (trains from London)
* Birmingham to Glasgow / Edinburgh – 3 minutes

**Evening trains:** After the evening peak, trains in both directions have 4 minutes flex. But, in the late evening when two-track working applies between London and Hanslope Junction trains have further increased journey times.**Saturdays:** The off peak weekday journey times will apply between London and Birmingham / Crewe / Manchester. In the evening, journey times are extended for two-track working between London and Hanslope Junction. **Sundays:** A similar situation applies on Sundays, but with journey times extended as follows: * Mornings - between London and Hanslope Junction, for two-track working and then for possible two-track working in the Trent Valley;
* Afternoons / Evenings – 2 extra minutes between London and Rugby, and 5 minutes between Rugby and Colwich for two-track working or additional TSRs
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**ANNEX “D”**

**Sample from Rules of the Route section 4 between Watford Junction and Bourne End**

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Annex “E”

**CONDITION D6 - DECISION CRITERIA**

The Decision Criteria consist of the necessity or desirability of the following (none of which necessarily has priority over any other):

(a) sharing the capacity, and securing the development, of the Network for the carriage of passengers and goods in the most efficient and economical manner in the interests of all users of railway services having regard, in particular, to safety, the effect on the environment of the provision of railway services and the proper maintenance, improvement and enlargement of the Network;

(b) seeking consistency with any current Route Utilisation Strategy which is either (i) published by the Strategic Rail Authority or the Department for Transport before 31 May 2006, or (ii) established by Network Rail in accordance with its Network Licence;

(c) enabling a Bidder to comply with any contract to which it is party (including any contracts with their customers and, in the case of a Bidder who is a franchisee or franchise operator, including the franchise agreement to which it is a party), in each case to the extent that Network Rail is aware or has been informed of such contracts;

(d) maintaining and improving the levels of service reliability;

(e) maintaining, renewing and carrying out other necessary work on or in relation to the Network;

(f) maintaining and improving connections between railway passenger services;

(g) avoiding material deterioration of the service patterns of operators of trains (namely the train departure and arrival frequencies, stopping patterns, intervals between departures and journey times) which those operators possess at the time of the application of these criteria;

(h) ensuring that, where the demand of passengers to travel between two points is evenly spread over a given period, the overall pattern of rail services should be similarly spread over that period;

(i) ensuring that where practicable appropriate provision is made for reservation of capacity to meet the needs of Bidders whose businesses require short term flexibility where there is a reasonable likelihood that this capacity will be utilised during the currency of the timetable in question;

(j) enabling operators of trains to utilise their railway assets efficiently and avoiding having to increase the numbers of railway assets which the operators require to maintain their service patterns;

(k) facilitating new commercial opportunities, including promoting competition in final markets and ensuring reasonable access to the Network by new operators of trains;

(l) avoiding wherever practicable frequent timetable changes, in particular for railway passenger services;

(m) encouraging the efficient use of capacity by considering a Bidder’s previous level of utilisation of Train Slots;

(n) avoiding, unless absolutely necessary, changes to provisional International Paths following issue of the applicable Rules of the Plan; and

(o) taking into account the commercial interests of Network Rail and existing and potential operators of trains in a manner compatible with the foregoing.

In its consideration of paragraph (d) of this Condition D6, Network Rail shall not be entitled to determine that its Restrictions of Use of any part of the Network shall be as contemplated by any relevant maintenance contract by reason only of the terms and conditions of that contract.

In this paragraph, "relevant maintenance contract" is a contract which Network Rail shall have entered into, or shall intend to enter into, with any person for the maintenance, renewal or the carrying out of any other work on or in relation to the Network.

Annex “F”

*Provisions applicable to Key Journeys and Maximum Journey Times*

7.5 A Journey Time Review Notice is a notice given to the parties by ORR:

(a) requiring them to enter into negotiations in good faith to vary such Journey Times set out in Tables 6.1, 6.2 or 6.3 as are specified in the notice;

(b) after consultation with the parties, the Secretary of State and such other persons as it considers appropriate; and

(c) containing its reasons for giving it.

7.6 As soon as reasonably practicable after the service of a Journey Time Review Notice, the parties shall begin and in good faith diligently pursue the negotiations in question.

7.7 If the parties reach agreement on the variations in question, they shall send a copy of them to ORR for its consent, together with a note of the reasons for them and an explanation of how they are consistent with its statutory duties.

7.8 If the parties fail to reach agreement on the variations in question within 45 days of the giving of a Journey Time Review Notice, the matter shall be referred to expert determination in accordance with Part D of the Access Dispute Resolution Rules. In such a case, the parties shall require:

 (a) that the expert’s determination is delivered no later than 30 days after the date of referral of the matter to the expert;

(b) the expert to establish such rules and procedures for the conduct of the determination as he sees fit having regard to that timescale;

(c) the expert to give reasons for his determination; and

(d) the expert to reach a determination that is fair and reasonable on the basis of the following criteria:

(i) Journey Times should be as short as is compatible with the development of a safe, reliable and robust timetable;

(ii) any relevant criteria which may have been published by ORR; and

(iii) the reasons for the service of the Journey Time Review Notice given by ORR in that notice.